*****

In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 19.9.2006.

Savitri .. Appellant.

vs

Kuradia ... Respondents.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Harbhagwan Singh,Senior Advocate with
Mr.Vikrant Duggal,Advocate,for the appellant.
Mr.Pritam Saini,Advocate,for the respondent.

Kiran Anand Lall, J.

The appellant-plaintiff is the married daughter of Sardha Ram. Her mother had died long back. Sardha Ram died during the pendency of the suit.

The appellant had filed a suit for declaration to the effect that the gift-deed dated 10.9.1982, alleged to have been executed by Sardha Ram (who was alive at the time suit was filed), in favour of respondent, in respect of the suit land, is void and non-existent. She pleaded that Sardha Ram, who was of about 80 years at the time suit was filed, was not of sound disposing mind. He never executed any gift-deed in favour of respondent. The gift-deed dated 10.9.1982 is a forged document. And, if it is proved that it bore the thumb-mark of Sardha Ram, the same must have been obtained by playing fraud on him, or by misrepresentation of facts to him. It was also pleaded that Sardha Ram never lived with the respondent. It was Savitri appellant, who had been serving him. She, accordingly, requested the respondent to treat the gift-deed as void and non-existent but he refused.

*****

Therefore, she had to file the suit.

Except the relationship between the appellant and Sardha Ram, the respondent disputed all the averments made in the plaint. Claiming to be nephew (brother's son) of Sardha Ram, he pleaded that Sardha Ram, who had been living with him, for the last more than 20 years, had executed the gift-deed in his favour, of his own accord, and had also got it registered. Sardha Ram had delivered possession of land also, to him, at the time the gift-deed came into existence and since then, he had been continuing in its cultivating possession.

Parties went to trial on the following issues:-

1. Whether the gift deed dated 10.9.1982 is illegal, null and void and not binding upon the plaintiff as alleged? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the suit is bad for misjoinder of parties? OPD
4. Relief.

On completion of trial, the trial court decreed the suit, and held that Sardha Ram was not in a sound disposing mind at the relevant time. The gift-deed dated 10.9.1982 was, accordingly, declared as illegal, null and void, and not binding on the appellant. The respondent went up, in appeal. The first appellate court accepted it and dismissed the suit, holding the gift-deed to be a valid document, executed by Sardha Ram, in a sound disposing mind. It was also held that during the life time of Sardha Ram, the appellant had no right to challenge it, on the basis of fraud or misrepresentation, etc.

Feeling dissatisfied with the verdict of the first appellate court,

*****

the appellant came up in second appeal, to this court.

Since appeal was filed prior to the amendment of Section 100 CPC, no substantial question of law was initially framed. However, before addressing arguments, learned counsel for the appellant placed the following two substantial questions of law, on file:-

> "1. Whether Sarda Ram was of a sound disposing mind with the ambit of Section 12 of the Indian Contract Act.
>
> 2. Whether non-examining of Sarda Ram and Sub Registrar, has effected the merits of the case."

I have heard learned counsel for the parties and have also carefully gone through the trial court records.

According to the learned counsel for the appellant, Sardha Ram was not of sound disposing mind at the time he is alleged to have executed the gift-deed. He referred to Section 12 of the Indian Contract Act in this regard, which reads as under:-

> "12. What is a sound mind for the purposes of contracting.- a person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.
>
> A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

*****

> A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind."

The said provision of law, it may be said, is applicable to contracts only, and not to gift-deeds. But, even if, it is applied to the case in hand where execution of a gift-deed is involved, it would not help the appellant, because its bare reading shows that it is the state of mind of the executant, at the time the document was executed, which is relevant, and what is required to be proved is that the concerned person was capable of understanding the contract and of forming a rational judgment as to its effect upon his interests, at the time when he made the contract. In the case in hand there is absolutely no evidence indicating that Sardha Ram was not in a sound state of mind on 10.9.1982 i.e. the day on which he executed the gift-deed. After execution of the gift-deed, he had appeared before the Sub-Registrar also and the endorsement of Sub-Registrar thereon, copy Ex.D1, indicates that it was read over to him by the Sub-Registrar, and he had thumb-marked it after admitting its contents to be correct. This fact goes a long way to substantiate the case of respondent that execution of gift-deed was a voluntary act on the part of Sardha Ram. Registration of document, it may be stated, is a solemn act, and if there is a registration endorsement on a document, it shows that necessary formalities required by law had been complied with. Reference in this connection may be made, with advantage, to AIR 1921 Nagpur 34 *Murlidas vs. Haridas*, where while dealing with the case of a registered will, it was held that "*the registration was conclusive evidence that, at the time of registration at least, the testator was in his senses and mentally competent to make a will and that he did then affirm*

that the contents of the will were his intentions as to the disposal of his property after his death." A similar view was taken by the Privy Council in AIR 1929 Privy Council 81 *Sennimalai Goundan and another vs. Sellappa Goundan and others*, while dealing with a case involving a registered partnership-deed, wherein it was held that, "*where a person admits execution before the Registrar after the document has been explained to him, it cannot subsequently be accepted that he was ignorant of the nature of the transaction."*

After appreciating the evidence on record, the first appellate court had rightly concluded that there was no evidence on record to indicate that at the time Sardha Ram executed the gift-deed, he was of unsound mind. Learned counsel for the appellant, however, referred to the testimony of Sardha Ram, as PW6, and contended that, at that time, he was not in a sound state of mind. Firstly, his mental state, as it was at that time, is not relevant, and secondly, I have carefully considered his testimony but I do not think that he was of unsound mind, even at that time. Undisputedly, he was more than 80 years of age and, at the best, it can be said that when he was examined in court (as PW6), as observed by the first appellate court, he "*was having weakness of mind due to old age".* Resultantly, I do not find any force in the contention of learned counsel for the appellant that Sardha Ram was not of a sound disposing mind when he executed the gift-deed.

In so far as the above referred to second "substantial" question of law is concerned, it may be mentioned that the testimony of Sardha Ram has come on record, as PW6, though at the instance of the appellant. Therefore, it is, infact, factually wrong to say that the testimony of Sardha Ram has not come on record. In so far as the absence of the testimony of the

*****

Sub-Registrar is concerned, it may be stated, that there was no legal requirement to bring the same on record, in order to prove the registration of gift-deed. The scribe as well as the two attesting witnesses of the gift-deed had appeared in the witness-box and not only proved its execution by Sardha Ram but also proved that he was in a sound disposing mind at that time and further that the Sub-Registrar had read over the contents of the gift-deed and it was, thereafter, that he thumb-marked it after accepting its contents to be correct. In this view of the matter, non-examination of the Sub-Registrar as a witness in court cannot be said to have adversely effected the merits of the case.

Reference may also be made to the judgments referred to by the learned counsel for the appellant viz. 1977 PLR 185 *Smt.Mukhtiar Kaur vs. Smt. Gulab Kaur*, 1976 PLR 87 *State of Punjab and others vs. Sant Singh* and AIR 1938 Nagpur 204 (Head Note-C) *Mt.Hazrabi w/o Shaikh Naboo Musalman and others vs. Mt.Fatmabi w/o Shaikh Ismail Musalman*. I have carefully gone through all these judgments and found that none of these has any applicability to either of the two substantial questions of law, under reference. *Smt.Mukhtiar Kaur's case* and *State of Punjab and others*' case (supra) pertain to non-delivery of possession of the property gifted, whereas in *Mt.Hazrabi*'s case (supra), the party which had executed the deed had sought to avoid it on the ground of insanity on the date of execution.

Last but not the least, it may be mentioned that the appellant filed this suit challenging the gift-deed on the ground of fraud, misrepresentation etc., during the life time of its executant, Sardha Ram, whereas under Section 19 of the Indian Contract Act, when the consent of an agreement is caused by coercive, fraud or misrepresentation, the

*****

agreement can be voidable at the option of the party whose consent was so caused, and not by a third party. So, in the instant case, when the executant himself was alive, it was he alone who could have filed the suit himself or, if at all he was not of sound mind, through somebody else, acting as his guardian -ad-litem, for challenging the gift-deed on the ground of alleged unsoundness of mind or fraud etc. The appellant, who is a third party, had, in no case, any locus-standi to challenge it, during his life time. The suit filed by the appellant was, therefore, rightly held to be not maintainable also.

In view of the above, I do not find any merit in the appeal which shall, therefore, stand dismissed.

19.9.2006. (Kiran Anand Lall)
vs. Judge.